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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,094	12/02/2003	Yingfai Cheung	USP2136A-YC	1750

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EXAMINER
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VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/725,094	Applicant(s) CHEUNG, YINGFAI	
	Examiner Andrea M. Valenti	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-30 and 39-46 is/are pending in the application.
- 4a) Of the above claim(s) 15-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-30 and 39-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 27-30 and 39-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-32 of copending Application No. 10/725,101. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim and adjustable binding device with head and tail portion closure means consisting of a slot in the head portion engaged by inclined teeth of the holding neck of the tail portion.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27, 29, 39, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. Des. 299,307 to Finnigan in view of U.S. Patent No. 3,255,501 to Laguerre.

Regarding Claim 27, Finnigan teaches a fastening strap forming a binding loop around a growing plant with said supporter (Finnigan Fig. 7, 8, 11 and 12), but is silent on the structural features of the locking teeth and head elongated slot. However, Laguerre teaches a method for using a fastening strap (a) providing a guiding member (Laguerre Fig. 1) having a length substantially long enough to bind around said growing plant with said supporter, wherein said guiding member has a head portion (Laguerre Col. 1 line 50) defining at a head end, a tail portion (Laguerre Fig. 1 #5 and 6) defining at a tail end, and a plurality of elongated slits spacedly and inclinedly cut along two longitudinal edges of said tail portion of said binding member to form a plurality of locking teeth respectively and to define said holding neck portion on said binding member at a root portion of each of said locking teeth (Laguerre #1a and 1b), wherein each of said locking teeth has two parallel guiding edges (Laguerre Fig. 1 element d) each having an outer end formed at said longitudinal edge of said tail portion of said guiding member and an inner end inclinedly and inwardly extended on said guiding

member towards said tail end thereof to define said holding neck portion (Laguerre Fig.1 element a) on said guiding member at said inner end of said guiding edge of each of said locking teeth, wherein each of said elongated slit has a uniform width from said outer end to said inner end, (b) twisting said tail portion of said guiding member to substantially align with an adjacent edge of a locker slot (Laguerre Col. 1 line 69-72 and Fig. 1 #3,2), having a triangular shape (Laguerre Fig. 2), formed at said head portion of said guiding member, wherein said adjacent edge of said locker slot (Laguerre Fig. 1 head portion) is substantially larger than a width of said guiding member (Laguerre Fig. 1 tail portion), wherein said locker slot has a width gradually increasing towards said head end of said guiding member (Laguerre Fig. 1 #3) (c) slidably inserting said tail portion of said guiding member through said locker slot to form a binding loop, wherein said tail portion of said guiding member is slid along said adjacent edge of said locker slot to adjust a loop diameter of said binding loop; and (d) twisting said tail portion of said guiding member back to its original orientation (Laguerre Col. 1 line 69-72) such that a holding neck portion of said corresponding locking tooth is locked at said locker slot by a transverse width thereof at a position that said adjacent edge of said locker slot is engaged between said guiding edges of said respective elongated slit so as to retain said loop diameter of said binding loop to fittingly bind, wherein said transverse width of said locker slot is larger than a thickness of said guiding member and is larger than a width of said holding neck portion of each of said locking teeth.

It would have been obvious to one of ordinary skill in the art to modify the teachings of Finnigan with the teachings of Lauguerre at the time of the invention since

the modification is merely an engineering design choice involving the selection of a known alternate equivalent means of securing the ends of the fastening strip selected for the known advantage of it is adjustability for a more secure fit to meet the different size needs of different plant varieties.

Regarding Claim 29, Finnigan as modified teaches a height of said locker slot at least (which means it can be more then) equals to said width of said guiding member (Laguerre Fig. 1-3).

Regarding Claim 39, Finnigan as modified teaches wherein said guiding edge of each of said locking teeth is extended inclinedly at a direction corresponding to an inserting direction of said tail portion of said guiding member such that said locking teeth are allowed to slide through said locker slot at said inserting direction while said locking teeth are blocked up at said transverse width at an ejecting direction which is opposed to said inserting direction (Finnigan Fig. 1).

Regarding Claim 43, Finnigan as modified teaches wherein said tail end of said guiding member has a tapered shape having a width substantially smaller than said transverse width of said locker slot such that said tapered tail portion of said guiding member is guided to slide through said locker slot when said tail end of said guiding member is inserted there through (Laguerre Fig. 1 #6).

Claims 28, 30, 40-42, 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. Des. 299,307 to Finnigan in view of U.S. Patent No.

3,255,501 to Laguerre as applied to claim 27 above, and further in view of French Patent FR 253647 to Vatan.

Regarding Claim 28, Finnigan as modified teaches the structure of the fastening strip (Laguerre Fig. 1 when #6 goes into #2) and that it can be reused, but is silent on explicitly teaching the method steps of accommodating a plant. However, Vatan teaches a fastening strip method step of (e) when said growing plant grows to increase a diameter thereof to a grown diameter, releasing said guiding member from said growing plant by twisting said tail portion of said guiding member to align with said adjacent edge of said locker slot to unlock said respective locking tooth with said locker slot such that said tail portion of said guiding member is allowed to slidably eject from said locker slot; (f) slidably releasing said tail portion of said guiding member along said adjacent edge of said locker slot such that said binding loop of said guiding member is adjusted for fitting said grown diameter of said growing plant with respect to said supporter; and (g) twisting said tail portion of said guiding member back to its original orientation such that said locking neck portion of said adjacent locking tooth is locked at said locker slot so as to retain said loop diameter of said binding loop to fittingly re-bind said guiding member around said growing plant with said supporter (Vatan English abstract teaches adjusting the size of the loop to accommodate the growth of the plant and English translation page 5 lines 8-11). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Finnigan with the teachings of Vatan at the time of the invention as an economically efficient means of meeting the plant's needs for support through various stages of development.

Regarding Claim 30, Finnigan as modified teaches a height of said locker slot at least (which means it can be more then) equals to said width of said guiding member (Laguerre Fig. 1-3).

Regarding Claims 40, 41, and 42, Finnigan as modified teaches wherein said guiding edge of each of said locking teeth is extended inclinedly at a direction corresponding to an inserting direction of said tail portion of said guiding member such that said locking teeth are allowed to slide through said locker slot at said inserting direction while said locking teeth are blocked up at said transverse width at an ejecting direction which is opposed to said inserting direction (Finnigan Fig. 1).

Regarding Claim 44, 45, and 46, Finnigan as modified teaches wherein said tail end of said guiding member has a tapered shape having a width substantially smaller than said transverse width of said locker slot such that said tapered tail portion of said guiding member is guided to slide through said locker slot when said tail end of said guiding member is inserted there through (Laguerre Fig. 1 #6).

### ***Response to Arguments***

Applicant's arguments with respect to claims 27-30 and 39-46 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has not provided a terminal disclaimer nor has applicant argued/address the double patenting ground of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



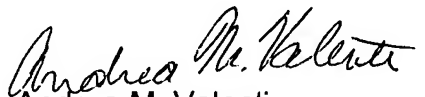
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Andrea M. Valenti  
Patent Examiner  
Art Unit 364

17 May 2006